IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 131 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

JAGDISH PROCESSORS PVT LTD.

Appearance:

MR AKIL QURESHI WITH MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 20/09/2000

ORAL JUDGEMENT

Per Dave,J:

At the instance of the revenue, the following question of law has been referred to this court under the provisions of section 256 (1) of the Income tax Act, 1961, (hereinafter referred to as `the Act') :

"Whether on the facts and in the circumstances of the case, the interest paid on agency deposit is fully allowable as business expenditure and the same is not covered by the provisions of section 40A (8) of the Income tax Act, 1961?"

It has been submitted by the learned advocate appearing for the revenue that a similar question had arisen in the case of the assessee for the assessment year 1980-81 and the said question has been decided in ITR No. 16 of 1985 on 29.8.2000.

This court has decided in the case of the assessee for the assessment year 1980-81 that when interest is paid by the assessee to its agent on Sharafi Account, it is not covered by the Explanation (b) (vii) to Section 40A (8) of the Act. In the circumstances, the assessee cannot claim any benefit under the Explanation referred to hereinabove.

In view of the above decision rendered in ITR No.16 of 1985, for the reasons given in the said judgment, we decide this Reference in favour of the revenue and against the assessee. Reference accordingly stands disposed of with no order as to costs.

(D. M. Dharmadhikari, C.J.)

(A. R. Dave, J.)

parekh